

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	
v.	)	
	)	JUDGE
S. H. BELL COMPANY,	)	
	)	
Defendant.	)	
	)	

**COMPLAINT**

The United States of America (the "United States"), by authority of the Attorney General of the United States and through its undersigned attorneys, acting at the request of the United States Environmental Protection Agency ("U.S. EPA"), files this Complaint and alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action brought pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413, for the assessment of civil penalties against the S.H. Bell Company ("S.H. Bell") for violations of the CAA at the two terminals of S.H. Bell's facility located at 2217 Michigan Avenue (the "Stateline Terminal") and 1 Saint George Street (the "Little England Terminal"), East Liverpool, Ohio (hereinafter collectively referred to as the "East Liverpool Facility"). Portions of the Stateline Terminal are located in the State of Pennsylvania. Specifically, this action is brought for violations by S.H. Bell of the Ohio State Implementation Plan ("SIP"), the General Provisions of the New Source Performance Standards ("NSPS") set forth at 40 C.F.R. § 60.7 and 60.8, and for S.H. Bell's failure to timely submit an appropriate

permit application as required by Sections 503(a) and (c) of the CAA, 42 U.S.C. §§ 7661b (a) and (c), and 40 C.F.R. § 70.5(a).

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this civil action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b), (c) and 1395(a), because Defendant resides, maintains an office, and conducts business in this district and because the violations occurred within this district.

### **NOTICE**

4. Notice of commencement of this action has been given to the State of Ohio, specifically, the Ohio Environmental Protection Agency (“Ohio EPA”), and to the State of Pennsylvania, specifically, the Pennsylvania Department of Environmental Protection (“Pennsylvania DEP”), as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

### **PARTIES**

5. Plaintiff is the United States of America, on behalf of the Administrator of the U.S. EPA. The Attorney General is authorized to bring this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 516 and 519.

6. Defendant S.H. Bell is a corporation organized under the laws of the State of Pennsylvania, is registered as a domestic corporation doing business in the State of Pennsylvania, and is registered as a foreign corporation duly licensed to do business in the State of Ohio. S.H. Bell owns and operates the Stateline Terminal, located at 2217 Michigan Avenue, and the Little

England Terminal, at its East Liverpool, Ohio materials storage, handling and processing Facility. Portions of the Stateline Terminal are located in the State of Pennsylvania.

7. S.H. Bell is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

8. S.H. Bell is an “owner” and “operator” of “stationary sources” at the East Liverpool Facility, as those terms are defined in Sections 111 and 113(b) of the CAA, 42 U.S.C. §§ 7411, and 7413(b).

### **GENERAL ALLEGATIONS**

#### **I. CAA Permit Requirements**

9. Section 302 of the CAA, 42 U.S.C. § 7602, defines “air pollutant” as any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term “air pollutant” is used.

10. Particulate matter with an aerodynamic diameter of less than or equal to 10 microns (“PM-10”) is an air pollutant under Section 302(g) and (t) of the CAA, Section 42 U.S.C. § 7602(g) and (t).

11. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that, after the effective date of any permit program approved under the CAA, it is unlawful for any person to operate a stationary source except in compliance with a permit issued by a permitting authority under the CAA, 42 U.S.C. §§ 7661-7661f.

12. Section 503(a) of the CAA, 42 U.S.C. § 7661b(a), provides that any stationary source specified in Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), shall become subject to a permit program and required to have a permit on the later of the following dates: (1) the effective date of a permit program applicable to the source; or (2) the date such source becomes subject to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

13. Section 503(c) of the CAA, 42 U.S.C. § 7661b(c), states that not later than 12 months from the date on which a source becomes subject to an approved permit program, any person required to have a permit shall submit to the permitting authority a compliance plan and an application for a permit.

14. 40 C.F.R. § 70.5 requires the owners or operators of all stationary sources in the State of Ohio and/or the State of Pennsylvania that are first time applicants for a permit to submit a complete permit application within 12 months from the date the source becomes subject to the permit program.

15. U.S. EPA published the final approval for the State of Ohio's operating permit program in the Federal Register on August 15, 1995 (60 Fed. Reg. 42045). The final approval became effective on October 1, 1995. 40 C.F.R. Part 70, Appendix A. As a result, all stationary sources in the State of Ohio were required to submit a permit application by October 1, 1996.

16. U.S. EPA published the final approval for the State of Pennsylvania's operating permit program in the Federal Register (61 Fed. Reg. 39597, July 30, 1996). The final approval became effective on August 29, 1996. 40 C.F.R. Part 70, Appendix A. As a result, all stationary sources in the State of Pennsylvania were required to submit a permit application by August 29, 1997.

17. 40 C.F.R. § 70.1(b) requires that all stationary sources in the State of Ohio and/or the State of Pennsylvania shall have a permit to operate (“PTO”) that assures compliance by the source with all applicable requirements.

## **II. New Source Performance Standards**

18. Section 111 of the CAA, 42 U.S.C. § 7411, authorizes the Administrator of the U.S. EPA to promulgate regulations establishing standards of performance for new sources (“NSPS”).

19. The NSPS regulations apply to the owner or operator of any stationary source that contains an affected facility, the construction or modification of which is commenced after the date of publication of any proposed standard applicable to that facility. 40 C.F.R. § 60.1(a).

20. “Affected facility” under the NSPS means, with reference to a stationary source, any apparatus to which a standard is applicable. 40 C.F.R. § 60.2.

21. Under Section 111 of the CAA, 42 U.S.C. § 7411, the Administrator promulgated the NSPS for Nonmetallic Mineral Processing Plants at 40 C.F.R. Part 60, Subpart OOO, applicable to each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station which commenced construction, reconstruction, or modification after August 31, 1983, at fixed or portable nonmetallic mineral processing plants. 40 C.F.R. § 60.670(a).

22. The NSPS at 40 C.F.R. § 60.7(a)(1) requires owners or operators subject to any NSPS to provide the Administrator with written notification of the date construction of an affected facility is commenced, postmarked no later than 30 days after such date.

23. The NSPS at 40 C.F.R. § 60.7(a)(3) requires owners or operators subject to any

NSPS to provide the Administrator with written notification of the date construction of initial startup of an affected facility is commenced, postmarked within 15 days after such date.

24. The NSPS at 40 C.F.R. § 60.8(a) requires that within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not more than 180 days after initial startup of the facility, the owner or operator of a facility subject to any NSPS shall conduct a performance test(s) and furnish the Administrator a written report of the results of the performance test(s).

### **III. SIP Requirements**

25. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to the Administrator of the U.S. EPA a plan which provides for the implementation, maintenance and enforcement of all national primary or secondary standards established pursuant to Section 109 of the CAA, 42 U.S.C. § 7409. These plans are required to include enforceable emission limitations, control measures, schedules for compliance, and permit programs for new sources.

26. Section 110(n)(1) of the CAA, 42 U.S.C. § 7410(n)(1), provides that any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to Section 110, as in effect prior to November 15, 1990, shall remain in effect as part of such implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator of U.S. EPA.

27. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, the Administrator approved Ohio Administrative Code (“OAC”) Chapter 3745-31 as part of the federally enforceable SIP for Ohio on October 31, 1980 (45 Fed. Reg. 72119). This approval became

effective on October 23, 1980. The approved SIP at OAC 3745-31-02 and OAC 3745-31-05, establishes requirements pertaining to Permits to Install ("PTI").

28. OAC 3745-31-02 provides that no person shall cause, permit, or allow the installation of a new source of air pollutants, or cause, permit, or allow the modification of an air contaminant source or a disposal system without first obtaining a PTI from the Director of the Ohio EPA in accordance with the requirements of this rule.

29. OAC 3745-31-05 provides that the Director of the Ohio EPA may impose special terms and conditions in the PTI as appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of environmental quality.

30. OAC 3745-35-02 provides that no person may cause, permit or allow the operation or use of any contaminant source without applying for and obtaining a PTO from the Director of the Ohio EPA in accordance with requirements of that rule, except if the air contaminant source is part of a facility that is required to obtain an operating permit.

31. 40 C.F.R. § 52.23 provides that a failure to comply with any permit condition, permit limitation or condition contained within an operating permit, including associated schedules, issued under a U.S. EPA-approved program incorporated into a SIP, is a violation of the SIP and subject to enforcement under Section 113 of the CAA, 42 U.S.C. § 7413.

#### **IV. S.H. Bell's Facility**

32. S.H. Bell's East Liverpool Facility is located in East Liverpool, Ohio with operations at its Stateline Terminal located at 2217 Michigan Avenue, and its Little England Terminal located at 1 Saint George Street. Portions of the Stateline Terminal are located in the State of Pennsylvania.

33. At the Stateline Terminal of its East Liverpool Facility located at 2217 Michigan Avenue, S.H. Bell operates a material handling and temporary storage space for ferrous and nonferrous materials for industry. Material handling includes services such as particle size reduction, screening, drying, boxing, bagging and packaging. S.H. Bell's operations at the Stateline Terminal result in emissions into the environment of particulate matter, including PM-10. Stationary source emission units at the Stateline Terminal include, but are not limited to, Bag Filling Stations, Screeners, Rotary Dryer, Carmen Palletizing Station, Barge Dock, and Raildock Conveyor.

34. At the Little England Terminal of its East Liverpool Facility located at 1 Saint George Street, S.H. Bell operates a material handling and temporary storage space for ferrous and nonferrous materials for industry. Material handling includes services such as particle size reduction, screening, drying, boxing, bagging and packaging. S.H. Bell's operations at the Little England Terminal result in emissions into the environment of particulate matter, including PM-10. Stationary source emission units at the Little England Terminal include, but are not limited to, the Simplicity Plant, Kue-Ken Crusher and Screener System, Hammermill Crushing System, and Boxing and Bagging System.

35. On August 29, 2002, S.H. Bell submitted to the Ohio EPA, a Federally Enforceable State Operating Permit (FESOP) application pursuant to the Ohio Administrative Code ("OAC") 3745-35-02 and -07 for the stationary sources on the Ohio side of the Stateline Terminal and a minor source facility operating permit for stationary sources at the Little England Terminal, which applications are pending with the Ohio EPA. On August 29, 2002, S.H. Bell submitted to the Pennsylvania DEP, a FESOP application pursuant to 25 PA Code ch. 127,



Subchapter B, for the stationary sources at the Stateline Terminal located in Pennsylvania, which application is pending with the Pennsylvania DEP.

**FIRST CLAIM FOR RELIEF**  
**(CAA: Failure to Obtain an Operating Permit)**

36. Paragraphs 1-35 are realleged and incorporated herein by reference as if set forth in full.

37. S.H. Bell's Stateline Terminal facility includes stationary sources in both Ohio and Pennsylvania, and operations at its Little England Terminal include stationary sources in Ohio.

38. On October 1, 1996, portions of S.H. Bell's East Liverpool Facility, located within Ohio, were subject to regulation by the State of Ohio under 40 C.F.R. Part 70, and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and S.H. Bell was required to apply for a stationary source permit from the State of Ohio for those portions of its Facility on or before that date.

39. On August 29, 1997, portions of S.H. Bell's East Liverpool Facility, located within Pennsylvania, were subject to regulation by the State of Pennsylvania under 40 C.F.R. Part 70, and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and S.H. Bell was required to apply for a stationary source permit from the State of Pennsylvania for those portions of its Facility on or before that date.

40. Until August 29, 2002, S.H. Bell failed to file a stationary source permit application for any portion of its East Liverpool Facility with the State of Ohio by October 1, 1996.

41. Until August 29, 2002, S.H. Bell failed to file a stationary source permit

application for any portion of its East Liverpool Facility with the State of Pennsylvania by August 29, 1997.

42. As a stationary source owner and operator, S.H. Bell violated 40 C.F.R. § 70.5(a) and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), by failing to timely submit a complete stationary source permit application to the State of Ohio and/or the State of Pennsylvania.

43. S.H. Bell has operated sources at the Ohio portion of its East Liverpool Facility since October 1, 1996, and S.H. Bell continues to operate such sources, without having obtained an operating permit for its East Liverpool Facility from the State of Ohio as required by Section 502(a) of the CAA, 42 U.S.C. § 7661a(a) and 40 C.F.R. Part 70.5.

44. S.H. Bell has operated sources at the Pennsylvania portion of its East Liverpool Facility since August 29, 1997, and S.H. Bell continues to operate such sources, without having timely obtained an operating permit for its East Liverpool Facility from the State of Pennsylvania as required by Section 502(a) of the CAA, 42 U.S.C. § 7661a(a) and 40 C.F.R. Part 70.5.

45. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, S.H. Bell is subject to civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997 and before March 15, 2004; and up to \$32,500 for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended.

**SECOND CLAIM FOR RELIEF  
(Ohio SIP: Failure to Obtain PTI for Boxing and Bagging System  
at Little England Terminal)**

46. Paragraphs 1-35 are realleged and incorporated herein by reference as if set forth

in full.

47. S.H. Bell installed a Boxing and Bagging System at its Little England Terminal of its East Liverpool Facility in 1997.

48. The Boxing and Bagging System is a source of air pollutants under OAC 3745-31-02.

49. Prior to installing the Boxing and Bagging System at its Little England Terminal, S.H. Bell failed to apply for and obtain a PTI for its Boxing and Bagging System, in violation of OAC 3745-31-02, part of the federally approved and enforceable Ohio SIP.

50. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, S.H. Bell is subject to civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997 and before March 15, 2004; and up to \$32,500 for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended.

**THIRD CLAIM FOR RELIEF**  
**(Ohio SIP: Failure to Timely Install Baghouse on Hammermill as Required by PTI)**

51. Paragraphs 1-35 are realleged and incorporated herein by reference as if set forth in full.

52. S.H. Bell installed a Hammermill at the Little England Terminal of its East Liverpool Facility in 1994.

53. On December 1, 1999, Ohio EPA issued to S.H. Bell a PTI which required S.H. Bell to install a baghouse on the Hammermill by February 28, 2000.

54. S.H. Bell did not install the baghouse on the Hammermill at the Little England Terminal of its East Liverpool Facility until May 2001, more than 14 months after the required completion date set forth in its PTI, in violation OAC 3745-31-02, part of the federally approved and enforceable Ohio SIP.

55. Pursuant to 40 C.F.R. § 52.23, failure to comply with any condition in a permit issued under an EPA-approved program is a violation of a requirement of the Ohio SIP and subject to enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413.

56. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, S.H. Bell is subject to civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997 and before March 15, 2004; and up to \$32,500 for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended.

**FOURTH CLAIM FOR RELIEF**  
**(NSPS: Violation of General Provisions Requirements Applicable to**  
**Nonmetallic Mineral Processing Plants)**

57. Paragraphs 1-35 are realleged and incorporated herein by reference as if set forth in full.

58. Pursuant to 40 C.F.R. § 60.670, Subpart OOO, the NSPS General Provisions of 40 C.F.R. Part 60 apply to all affected facilities at nonmetallic mineral processing plants which commenced construction, reconstruction, or modification after August 31, 1983.

59. S.H. Bell's Hammermill Crushing System used for processing fluorspar consists of 3 Conveyors, a Double Deck Screen, a Storage Bin, and the Hammermill, each of which is an

"affected facility" within the meaning of 40 C.F.R. § 60.670. S.H. Bell constructed, reconstructed, and/or modified the Hammermill Crushing System at the Little England Terminal after August 31, 1983, and operated the Hammermill Crushing System for crushing and grinding the nonmetallic mineral fluorspar until at least July 2001.

60. Each of the affected facilities at S.H. Bell's East Liverpool Facility listed in Paragraph 59, above, is subject to the requirements of 40 C.F.R. § 60.670, Subpart OOO, and the NSPS General Provisions of 40 C.F.R. Part 60.

61. For each of the affected facilities listed in Paragraph 59, S.H. Bell violated the General Provisions at 40 C.F.R. §§ 60.7(a)(1) and 60.7(a)(3) by failing to file with the Administrator an initial notification of the date construction, reconstruction, or modification of each facility was commenced and by failing to file a notification of the initial startup of each facility.

62. For each of the affected facilities listed in Paragraph 59, S.H. Bell violated the General Provisions at 40 C.F.R. §§ 60.8(a) by failing to conduct the required initial testing within 180 days of the initial startup of each facility.

63. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, S.H. Bell is subject to civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997 and before March 15, 2004; and up to \$32,500 for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Assess civil penalties against Defendant, S.H. Bell for up to the maximum amounts provided in the applicable statutes and regulations for each of S.H. Bell's violations of Section 502 of the CAA, 42 U.S.C. § 7661a, 40 C.F.R. § 70.5(a), the NSPS General Provisions of the NSPS regulations at 40 C.F.R. §§ 60.7(a)(1), 60.7(a)(3) and 60.8(a), and the Ohio SIP, in accordance with the factors stated in the CAA; and
2. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

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